

PRESIDENT Nixon's own defense of the illegal mass arrests of Mayday was quaint and tricky, and came in three steps — first, that the arrested *deserved* to have their rights violated because they were guilty of violating the rights of others; second, that they were not, really, guilty of violations, since it was impossible to gather evidence during illegal arrests; and third, the government therefore presumed them innocent and released them, which proves their rights were not violated, even though (remember the first point) they deserved to have their rights violated. The government, far from acting badly itself, spared those who acted badly. The police were positively magnanimous.

Other apologists for that unsavory episode use different arguments — which suggests that even they see through the President's trickiness. Richard Kleindienst, for instance, speaking for the Justice Department, used two arguments, based respectively on the Mayday International and the Criminal Heart.

THE INTERNATIONAL, he assures us, entered into the year of planning that lay behind the Mayday assault. The government had information connecting what happened to plans laid as far back as June of 1970 and support gathered from as far away as Hanoi and Paris. Well, the government seems to be specializing in conspiracy these days, and one can only ask why — given all the evidence Kleindienst lays claim to, the conspiracy was not nipped in the bud. Why wait for disruption to occur? After all, the department did not wait for Kissinger to be kidnaped. It caught the "conspirators" before they had carried out their nefarious plans. Why did they fail to do the same for the Mayday Mob?

For this government, the crime is not the crime. *Conspiring* is the crime. Thus, considering how little evidence was felt to be needed in other cases, one does not have confidence in the assurance that there was *plenty* of evidence here — enough, that is, to justify suspension of constitutional

arrest procedures. It is the job of the government to enforce the Constitution (not to undermine it). If officials possessed evidence of a plan that would *necessitate* suspension of the Constitution's norms, they should have prevented the plan from reaching its point of execution. Kleindienst's first defense is no defense.

But, as if, sensing the weakness of that one, he has another. Ignoring his boss's distinction — i.e., that the people confined, though they deserved to have their rights violated, were not guilty — Kleindienst comes down hard on the fact that mere release does not mean the detained were *innocent*. He says, of those who got away without formal charges being lodged: "On Mayday the police were arresting disrupters who were breaking District of Columbia laws, and the offenders knew it when they were arrested and they know it now." Trial, that is, does not go on in the public forum, but in the criminal heart, which knows its own guilt. The motto of this Justice Department seems to be that "the Shadow knows." The policeman's eye pierces to the criminal heart, discerns the guilt there and arraigns it. Guilty men flinch under that gaze, self-convicted, needing no further prosecution.

ALL VERY WELL. The cop knows. And the crook knows. And the crook knows that the cop knows. But where does that leave *us*, the public? How do *we* know the Shadow only makes illegal arrests of men whose heart is criminal? Apparently we are to *presume* that the cops are too pure to break their own laws except when they have spotted a criminal heart beating in the crowd. In short, we must either share the clairvoyance of our law enforcers, or just make an act of belief in their clairvoyance. (This would, you must admit, spare us the time and trouble of long efforts to establish guilty by the legal process).

Still, I lack the policeman's gift. I just don't know whether "the Shadow knows," and feel that we should continue asking for evidence a little less mystical.

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